

RACING PENALTIES APPEAL TRIBUNAL

**DETERMINATION AND REASONS FOR DETERMINATION OF
MR D MOSSENSON (CHAIRPERSON)**

APPELLANT: ALLEN CHRISTOPHER LEWIS

APPLICATION NO: A30/08/787

PANEL: MR D MOSSENSON (CHAIRPERSON)

DATE OF HEARING: 19 APRIL 2016

**DATE OF DETERMINATION
AS TO CONVICTION:** 19 APRIL 2016

**DATE OF DETERMINATION
AS TO PENALTY:** 21 APRIL 2016

IN THE MATTER OF an appeal by ALLEN CHRISTOPHER LEWIS against the determination made by Racing and Wagering Western Australia Stewards of Harness Racing on 12 April 2016 imposing a suspension of four weeks for breach of Australian Rule of Harness Racing 149(2).

Mr A C Lewis represented himself.

Mr C Coady represented the Racing and Wagering Western Australia Stewards of Harness Racing.

BACKGROUND

- 1 Mr Allen Christopher Lewis is a highly experienced and decorated driver who drove the favourite RED HOT ROXY in Race 3 at Gloucester Park on 12 April 2016.

- 2 Following the running of the race Mr Lewis was called in to the Stewards to explain why he handed up the lead in the early stages and did not come off the marker pegs to race outside the leader approaching the home turn to receive the bell.
- 3 The Stewards were concerned that expectations were high for Mr Lewis' horse. As Mr Coady, the Chairman of the Stewards' panel put it, "People want to see a run for their money. They haven't got one tonight".
- 4 During the course of the inquiry Mr Coady further commented that it was necessary to come off the marker pegs in order to give himself options rather than remain where he did. Mr Lewis was accused of not having driven RED HOT ROXY as though it was the best horse in the race but rather "for luck". Further, it was said that those people who had lost their money betting on RED HOT ROXY did not know whether their horse was good enough. Rather they lost their money because the horse was not given a chance.
- 5 Despite Mr Lewis' explanation and justification for the manner in which he drove, he was charged with a breach of Australian Rule of Harness Racing 149(2). That rule states that *"A driver shall not drive in a manner which in the opinion of the Stewards is unacceptable"*.
- 6 Mr Lewis pleaded not guilty and argued his cause on the basis that he gave RED HOT ROXY every possible chance by staying where he did. "If I went into the breeze I didn't think I was going to be giving it every chance. After running a solid first quarter, then having to sit in the breeze through, I didn't think that was going to be an option with the other factors in it, the horse, one, it is a filly, two, it was underdone" (sic). Mr Lewis argued that he used his judgment appropriately, which extended over many years. He had correctly applied his knowledge and experience in the course of the race. He tried to give the horse the best chance but things did not work out as he had planned.
- 7 Despite the explanation, the Stewards found Mr Lewis guilty.
- 8 In determining penalty the Stewards briefly acknowledged Mr Lewis' excellent record extending over at least the last 20 years. They considered the penalties normally

imposed in regard to this type of driving incident. They referred to the fact it was a two year old race and the conditions were testing due to the state of the track. Normally a six week suspension was usual for such an unacceptable drive but in this case, this was reduced to a four week suspension because of those factors.

- 9 Mr Lewis appealed against both his conviction and penalty. In support of the appeal against conviction, Mr Lewis states in the Notice of Appeal:

"Not enough weight was given to: The condition of the track. (2) The horse being a very inexperienced two year old having only raced once, a month Prior. (3) The evidence tendered that the horse missed fast work leading up to the race due to a leg infection." (sic)

- 10 As to the appeal on penalty in the Notice, Mr Lewis asserts the penalty is excessive on the basis the Stewards did not place enough weight on Mr Lewis' good driving record. Further, no weight was placed on the loss of income in forthcoming races due to the suspension.

REASONS

- 11 The Rule in question contains the phrase "in the opinion of the Stewards". That same provision appears in numbers of other racing rules which have been the subject of adjudication and analysis many times over the years. It is well established that in order for an appellant to succeed in relation to an offence which is couched in those terms, it is necessary to establish that no reasonable body of Stewards, armed with all of the relevant facts of the case in question, would reasonably have reached the same conclusion which the Stewards in question had reached in relation to the matter under review.
- 12 The Stewards' panel in this matter comprised the Chief Steward of Harness Racing, Mr Coady, two other Stewards as well as a third cadet Steward. I am satisfied this panel of Stewards was entitled to reach the conclusion which it did as to the unacceptable nature of the drive. This is despite the fact that Mr Lewis put up a credible argument in

support of his contention that his ride was appropriate in all of the circumstances of the case. Had the Stewards' "opinion" phrase not appeared in the Rule, then I may well have concluded that there was justification in supporting Mr Lewis' assessment as to the quality of his drive. However, I was not persuaded that the Stewards were unreasonable in making their assessment of the quality of Mr Lewis' drive so as to justify overturning their decision.

13 Consequently I dismissed the appeal as to conviction at the conclusion of the hearing. However, I reserved my decision on the appeal against the penalty.

14 Based on Mr Coady's submission and the tendered list of penalties imposed for breaches of Rule 149(2), there can be no doubt that the starting point for penalising for a breach of the unacceptable driving rule is a six week suspension.

15 Having carefully studied the transcript of the inquiry, considered the oral submissions which the parties made, taken into consideration Mr Lewis' diagram and having had the opportunity of viewing a video of the race, I am persuaded that the penalty which was imposed is excessive. I believe the Stewards erred in only deducting two weeks for the mitigating factors. I am persuaded to reduce the usual penalty by four weeks for a variety of factors which include:

15.1 The exceedingly fine record which Mr Lewis enjoys which extends over very many years.

15.2 Mr Lewis' undoubted ability to know how to extract the best out of his drives. Mr Lewis' judgment of a horse's ability and evaluation of its potential to handle the prevailing conditions on the track need to be given credence.

15.3 The fact that Mr Lewis will stand to lose substantial earnings from his suspension. This factor was not referred to by the Stewards.

15.4 The questionable nature of the horse's fitness. This appears to have been ignored by the Stewards. I was led to believe that in cases where the quality of a drive is in contention and there is some doubt regarding the condition of the

trotter that it is usual practice for the veterinary Steward to check the animal and report to the Stewards or to have the trainer called to the inquiry for an explanation. Neither situation occurred in this case. I must therefore accept what Mr Lewis said both the Stewards, at their inquiry, and me, at the appeal, in fairly clear terms as to the physical condition of the filly and the nature of its training regime leading up to the race.

- 16 Taking into account all of the relevant factors, I consider the Stewards erred and it is appropriate to reduce the penalty which has been imposed.
- 17 I therefore uphold the appeal against penalty, quash the four week suspension imposed by the Stewards and substitute a suspension of two weeks.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

